

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6886

BILL NUMBER: HB 1176

NOTE PREPARED: Dec 30, 2008

BILL AMENDED:

SUBJECT: Residential Mortgage Lending Practices.

FIRST AUTHOR: Rep. Riecken

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: The bill prohibits a creditor or loan broker from recommending or issuing to, or procuring on behalf of, a borrower a residential mortgage loan without first making a good faith inquiry into the borrower's ability to repay the loan at the loan's full monthly cost. It provides that in the case of a residential mortgage loan that is closed after June 30, 2009, the creditor may not contract for and may not charge the debtor a prepayment fee or penalty. The bill provides that a settlement service provider in a home loan transaction shall, upon the borrower's request, permit the borrower to inspect the closing documents with respect to the home loan not later than two business days before the closing of the loan, subject to the settlement service provider's ability to obtain the needed information from the creditor or other parties to the transaction, upon a good faith effort by the settlement service provider to obtain the needed information.

This bill provides that the borrower may waive the right to inspect the closing documents by providing a written notice of waiver to the settlement service provider at or before the time of closing. This bill also provides that if the borrower requests to inspect the closing documents and the settlement service provider: (1) does not permit the borrower to inspect the documents in the specified manner or within the specified time frame; (2) is unable to obtain the needed information to allow the borrower to inspect the documents; or (3) has obtained incomplete information from the creditor or other parties; the borrower is entitled to delay or reschedule the closing without penalty and without forfeiting the right to enter into the home loan or into the purchase contract.

It provides that if the terms of the home loan set forth in the documents made available to the borrower before the closing differ from the terms of the home loan presented to the borrower at the time of the closing: (1) the Attorney General's (AG) Homeowner Protection Unit (HPU) may investigate the circumstances surrounding the home loan and take certain enforcement actions; and (2) the borrower is entitled to: (A)

delay or reschedule the closing without penalty and without forfeiting the right to enter into the home loan or into the purchase contract; and (B) bring an action for certain relief against the creditor if the creditor does not conform the terms of the home loan to the terms set forth in the documents made available to the borrower before the closing.

The bill provides that a settlement service provider is subject to a civil penalty of \$25 for each time the settlement service provider fails to make closing documents available to a borrower in the manner and within the time prescribed, unless: (1) the creditor or other parties having the needed information fail to provide that information or provide incomplete information; or (2) the borrower waives the borrower's right to receive the closing documents. The bill provides that after December 31, 2009, a creditor may not issue a mortgage loan to a borrower in Indiana unless the creditor has: (1) established an appraisal review program (program) that has been approved by the Real Estate Appraiser Licensure and Certification Board (REALCB); or (2) adopted a program established by the REALCB.

This bill sets forth criteria that a program established by a creditor or the REALCB must meet. It requires the board to adopt, not later than August 1, 2009, criteria for: (1) reviewing programs established by creditors; and (2) a program that may be adopted by creditors that do not establish their own programs. The bill also requires the Real Estate Commission (REC) to adopt, not later than September 1, 2009, emergency rules to adopt and implement the REALCB's criteria. This bill provides that any civil penalties collected shall be deposited in the Home Ownership Education Account (HOEA) within the state General Fund. It extends the period in a residential mortgage foreclosure proceeding during which process may not issue for the execution of a judgment or decree of sale from three months to 120 days after the filing of the complaint.

Effective Date: Upon passage; July 1, 2009.

Explanation of State Expenditures: *Attorney General-* The AG's Homeowner Protection Unit may conduct additional investigations as a result of the bill. The bill does not make an appropriation to the HPU; therefore, the HPU would have to conduct these investigations within the existing level of resources available.

Real Estate Commission- The REC would have to pass emergency rules to implement the REALCB's recommendations on an appraisal review program. The REC would have to meet and pass rules within the existing level of resources of the Professional Licensing Agency (PLA).

Background Information- The AG reverted \$173,490 at the close of FY 2008, \$0 in FY 2007, \$34,631 in FY 2006, and \$46,010 in FY 2005 to the General Fund. The HPU was appropriated \$63,391 from the state General Fund for FY 2009 operation.

The PLA reverted \$514,160 at the close of FY 2008. However, recent prior year reversions have been minimal due to the addition of several new boards and commissions, which currently total 39. All revenue collected by fees is deposited into the General Fund (with few exceptions). Appropriations made from the General Fund to the PLA are divided among the various boards and commissions, which are staffed by PLA employees. The REALCB was scheduled to meet 12 times during CY 2008. The REC is scheduled to meet nine times during CY 2009.

Explanation of State Revenues: *Home Ownership Education Account-* The HOEA would receive a new \$25 civil penalty as a revenue source to complement penalties collected for the following under current law:

-\$25 under IC 6-1.1-12-43(g) for a closing agent failing to provide a homestead credit or other property deduction form to a home purchaser.

-\$100 under IC 27-7-3-15.5 for a person not providing proper identification information to a closing agent at closing (effective after December 31, 2009).

The amount of revenue generated by the new penalty would depend on the number of violations. The penalty would be assessed on settlement service providers that fail to provide closing documents within two business days prior to closing to the home purchaser. The penalty could be assessed if the provider could not provide the documents upon a request that occurred with less than two business days until closing.

Additional Actions- The bill would allow additional legal action to be taken by the AG or a person.

Court Fee Revenue: If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Background HOEA- As of December 24, 2008, the HOEA had collected \$891.50 in fines and penalties. There were no fines or penalties deposited into this account during FY 2008.

Explanation of Local Expenditures:

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: AG; Indiana Housing and Finance Authority; REC, REALCB.

Local Agencies Affected: Trial courts, city and town courts.

Information Sources: Indiana State Budget Agency: *General and Rainy Day Fund Summaries, June 30, 2008*; Auditor's Data; *State of Indiana List of Appropriations Made by the 2007 Indiana General Assembly for the Biennium July 1, 2007, to June 30, 2009.*

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